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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable William Alsup, Judge

AMERICAN FEDERATION OF)	
GOVERNMENT EMPLOYEES, AFL-CIO,)	
et al.,)	
)	
Plaintiffs,)	
)	
VS.)	NO. C 25-01780-WHA
)	
UNITED STATES OFFICE OF)	
PERSONNEL MANAGEMENT, et al.,)	
)	
Defendants.)	
)	

San Francisco, California
Thursday, March 6, 2025

TRANSCRIPT OF REMOTE VIDEOCONFERENCE PROCEEDINGS

APPEARANCES: (Appearances via Zoom.)

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Official Reporter, CSR No. 12219

Thursday - March 6, 2025

1:05 p.m.

P R O C E E D I N G S

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THE CLERK: Before we get started, one announcement:

Any recording of this proceeding by video, audio, or screenshots is strictly prohibited by this Court.

We will get started momentarily.

(Pause in proceedings.)

THE CLERK: This court is now in session. The Honorable William Alsup is presiding.

Calling Civil Action 25-1780, American Federation of Government Employees, et al. versus United States Office of Personnel Management, et al.

Counsel, please state your appearances for the record, beginning with counsel for plaintiffs.

MS. LEONARD: Good afternoon, Your Honor. Danielle Leonard from Altshuler Berzon for the plaintiffs.

MS. LEYTON: Good afternoon, Your Honor. Stacey Leyton also from Altshuler Berzon, also for the plaintiffs.

MR. HELLAND: And good afternoon, Your Honor. This is Assistant United States Attorney Kelsey Helland for the defendants.

THE COURT: All right. Angie, is that it?

THE CLERK: That's it, Your Honor.

THE COURT: Okay. Well, let's get started.

1 And I apologize if I get cut off. It was very hard for me
2 to connect up here; and I'm far away from San Francisco, so
3 let's make good use of the time.

4 What is the need for this hearing? Go ahead, Plaintiffs.

5 Hello?

6 **MS. LEYTON:** It appears that Ms. Leonard has frozen,
7 so I will -- I will begin.

8 We have asked for this status conference because we have
9 indication that defendants do not intend to produce Mr. Ezell
10 at the upcoming hearing, as was ordered; and so we are
11 attempting to raise that issue with Your Honor.

12 It looks like Ms. Leonard has now rejoined.

13 **MS. LEONARD:** Yes. I'm very sorry. Somehow it -- it
14 removed me -- something removed me from the -- from the Zoom
15 session. I apologize.

16 And now I've been re-added, although that's my father's
17 name there, "Daniel Leonard"; but we'll fix that. So, Your
18 Honor, I apologize for that. I'm not sure what happened, but
19 we all have technical issues right now.

20 I'm assuming from Ms. Leyton's statement that you asked us
21 to explain what we are asking for.

22 **THE COURT:** Yes. Well, all right. So let's hear what
23 the Government has to say.

24 **MR. HELLAND:** Yes. Thank you, Your Honor.

25 In short, no final decision has yet been made whether to

1 produce Mr.Ezell for the scheduled evidentiary hearing or to
2 seek relief from the Court's order, which would be done well in
3 advance of that upcoming hearing.

4 So it is not, Your Honor, the case that we've represented
5 we will not be producing Mr.Ezell, rather simply no decision
6 has been made from that.

7 As far as the timing goes, Your Honor, I do want to convey
8 that the Government is willing to consent to let the TRO remain
9 in place for two more weeks so that any issues related to
10 scheduling or other logistical or legal issues concerning the
11 upcoming hearing can be addressed. But, in short, Your Honor,
12 it's not true that we have represented to the plaintiffs that
13 we won't be producing Mr. Ezell.

14 **THE COURT:** Well, when do you think you will make a
15 decision?

16 **MR. HELLAND:** Your Honor, by Monday. We would ask
17 that by Monday we either confirm that we'll be producing
18 Mr. Ezell and any other witnesses that plaintiffs have
19 identified, or that we would move for any relief by that time
20 as well.

21 **THE COURT:** Well, you will recall that when the
22 subject of an evidentiary hearing first came up, because of the
23 difference of Ezell versus the other declarations, I thought
24 you were quite enthusiastic and expectant about the evidentiary
25 hearing and him coming to testify -- testify. So I am a little

1 surprised by this turn of events.

2 But here's the thing: Is the issue that -- a burden on
3 him to get on an airplane and come across the country? Is that
4 the issue?

5 **MR. HELLAND:** There -- Your Honor, at a very high
6 level, there are multiple issues that we are actively
7 considering. I'm not authorized to take a position on any
8 particular issue, but there's just a host of issues that we're
9 working through related to the hearing.

10 **THE COURT:** Well, here is -- because time is short and
11 this is Thursday. Monday we will have burned up three or four
12 more days. I have thought about the problem, and if the
13 problem is that he doesn't -- he's busy and doesn't want to
14 take the time to come in person, then I suggest that the
15 plaintiffs could come to Washington and take his deposition;
16 two hours should be sufficient. And that could, then, be --
17 you could take your part of the deposition and they could take
18 their part of the deposition. And -- but the plaintiffs
19 deserve two hours themselves, so -- plus whatever time you
20 would use.

21 So that would save him being on an airplane, coming to
22 San Francisco. And then we could use his deposition in lieu of
23 the live testimony. So I give that to you as an option.

24 And I suppose that another option could be that he could
25 appear remotely at the hearing and be examined by both sides

1 from either his home or his office. That would also save time.
2 So those are -- those would be ways to reduce the burden of
3 appearing at an evidentiary hearing.

4 Now, you do need to remember this, though: You yourself
5 put forward his declaration. In fact, it's the only
6 declaration that the Government put forward and there is a
7 serious fact issue. And it is highly unusual for any party in
8 litigation to try to get away with they get their say but no
9 cross-examination.

10 One possibility would be that his -- his declaration would
11 be struck if he refuses to be examined under oath by the other
12 side. You just can't have it both ways.

13 And I'm sure you understand what I'm saying. This is not
14 like discovery, where the other side wants to go take
15 depositions of someone else who is not in -- this is someone
16 you yourself advanced as a declarant; and that is an important
17 thing for the Government to keep in mind.

18 Okay. Monday -- what time on Monday will you let us know
19 your position?

20 **MR. HELLAND:** We would ask for 5:00 p.m. Pacific,
21 Your Honor.

22 **MS. LEONARD:** Your Honor, if I may be heard on the
23 timing of this?

24 **THE COURT:** Yes. Go ahead.

25 **MS. LEONARD:** We would ask that the Government be --

1 inform of us of its position today. They've had since last
2 Thursday, and what we're talking about is the Government's
3 decision to defy this Court's order that you entered last
4 Thursday.

5 It is -- the issues that they are raising are not issues
6 regarding inconvenience. They are considering whether to
7 appeal Your Honor's order. And they've had that order since
8 last Thursday. Mr. Helland did not raise any objection at the
9 hearing at all. So this is by way, I suppose, of
10 reconsideration without even know knowing what these issues
11 are.

12 We are here today because time is of the essence, and with
13 respect to Mr. Helland and his clients, we need to know whether
14 we are going to be able to examine this witness or if the
15 declaration is going to be struck or what the result of this
16 is. There's no reason -- absolutely no reason why the
17 Government cannot make a decision on its position with respect
18 to Mr. Ezell, and whether it is going to comply with this
19 Court's lawful order.

20 **THE COURT:** Wait. I thought they -- the TRO they did
21 comply with that.

22 **MR. HELLAND:** Yes, Your Honor.

23 **THE COURT:** Isn't is that what -- so what order are
24 they not complying with?

25 **MS. LEONARD:** The order to produce to Mr. Ezell at the

1 upcoming hearing. You ordered that on the record at the TRO
2 hearing, and they are considering not complying.

3 **THE COURT:** Look -- go ahead.

4 **MR. HELLAND:** If I may, Your Honor. I don't mean to
5 speak over you but --

6 **THE COURT:** Please, go ahead.

7 **MR. HELLAND:** As we've made clear at this hearing and,
8 I think, to plaintiffs' counsel previously, we are not
9 contemplating simply ignoring Your Honor's order or not
10 complying with it; we will either comply or we will seek relief
11 from it in advance of the hearing. I want to be very clear
12 about that.

13 As far as the timing goes, Your Honor, as I've already
14 said we would -- the Government would be willing to extend the
15 TRO for two more weeks to give more time for these issues to --
16 to play out.

17 **THE COURT:** What's wrong with giving them that time?

18 They're willing to extend the TRO. I think the --
19 you know, it is the Government; they have to consult with
20 various arms of the government to decide what their strategy
21 will be. And they will give us the answer by 5:00 on Monday,
22 and then if need be, we will extend the TRO by two weeks -- up
23 to two weeks. So -- yes.

24 **MS. LEONARD:** Apologies.

25 **THE COURT:** Go ahead.

1 **MS. LEONARD:** Apologies. It's very hard to -- on the
2 Zoom to know when to -- if I'm interrupting. I apologize.

3 Your Honor, the issue with that is the whole reason we're
4 here is to ask for immediate injunctive relief to prevent the
5 ongoing harm that has been caused by OPM's unlawful actions.

6 Extending the TRO is certainly a minimum, if we're going
7 to move the PI hearing. But we are asking for further relief
8 both with respect to other agencies and with respect to the
9 actual relief ordered by the Court.

10 At the TRO hearing, Your Honor, you -- and in your order,
11 indicated that you didn't believe that reinstatement could be
12 ordered based on the fact that the agencies were not joined.
13 We have now, very quickly, moved to join the agencies that have
14 received OPM's orders and have taken, themselves, unlawful
15 action terminating these employees.

16 The harm that is being caused is snowballing every day in
17 the loss of services, and even a two-week extension will cause
18 irreparable harm, Your Honor. So we're prepared to move
19 forward as quickly as possible. These are simply delay tactics
20 by the Government that has had your order since last Thursday.
21 And they're -- they're not even offering a good-cause reason,
22 Your Honor, for the -- for why they can't give you -- give you
23 their position and why they need this extension. Their only --
24 their only reason is they haven't decided yet whether to
25 appeal.

1 And they -- the Government can make and its lawyers can
2 make that decision very quickly, Your Honor, and they should
3 have already decided that by now, frankly.

4 **THE COURT:** Well, listen, I'm a former member of the
5 Solicitor General's Office, back when Jimmy Carter was
6 president, and in order to appeal, they have to get the SG's
7 approval. So that's just one -- that's one step they've got to
8 go through; but there are other arms of the Department of
9 Justice and that -- they would -- and also the Office of
10 Personnel Management.

11 I don't think you're being -- I think you're exaggerating
12 the need and not appreciating the Government's need to sort it
13 out. So I'm going to -- I disagree with you.

14 The Government -- don't wait until 5:00 p.m., I'm going to
15 give you until noon on Monday --

16 **MR. HELLAND:** Understood.

17 **THE COURT:** -- noon West Coast time on Monday.

18 And by that point, you need to either -- if you're going
19 to seek relief, that's when you have to do it. You can't just
20 send a letter saying, "We're going to do it." You've got to
21 file your motion.

22 Do -- I think that's what you mean; right?

23 **MR. HELLAND:** Yes.

24 **THE COURT:** You'll seek relief on Monday.

25 **MR. HELLAND:** Yes, absolutely, Your Honor. Yes.

1 **THE COURT:** Now, it could be -- let's just make sure
2 we all understand.

3 If you -- let's say that you were to object to the order
4 to produce Ezell, and then go up on appeal. The other part of
5 the -- the rest of the evidentiary hearing could go forward.
6 For example, plaintiffs, I believe from the hearing, are going
7 to present witnesses who can tell us what was said in the
8 telephone conference call that took place between the two --
9 the January 20 and the February 14th; I think, it was on
10 February 13.

11 I expect that's what the plaintiffs will do. That's what
12 I had asked them to do because I would like to know what
13 happened in that phone call. That part could go forward even
14 if -- even if Ezell does not testify.

15 So I -- I'm -- right now, I'm inclined to keep the -- keep
16 the hearing date even if Ezell does not testify. But I will
17 listen and read your papers.

18 One other thing I want to say to the plaintiffs. When I
19 said put -- you had permission to bring a motion to add
20 agencies as parties, I was -- I didn't use the right phrase.
21 But I was -- meant relief defendants. In other words, they
22 should only be parties to the limited extent necessary to give
23 relief to something that OPM is found to have done wrong.

24 But what -- there's no way that I'm going to allow you to
25 bring in all these agencies and then, if other terminations

1 occur that are independent of OPM, that the agency does on its
2 own without -- without OPM's direction, then that's for another
3 lawsuit. That's not for Old Bill to deal with. That has to be
4 a brand-new lawsuit somewhere else.

5 My case, this case is OPM, OPM, OPM, and Ezell, Ezell,
6 Ezell, and the agencies only to the limited extent that they
7 are necessary to be relief defendants.

8 So I hope I'm making myself clear on that. It just cannot
9 evolve into a gigantic lawsuit against all terminations. I
10 am -- regardless of whether OPM is involved in the -- in the
11 case.

12 Do you understand what I'm saying?

13 **MS. LEONARD:** I do, Your Honor. But one point of
14 clarification if I may.

15 **THE COURT:** Sure.

16 **MS. LEONARD:** Because we have a certain number of
17 terminations that have happened to date, and I understand and
18 hear Your Honor and what you are saying about terminations that
19 are coming down the line and might be happening from this
20 moment forward. But we have a certain number of terminations
21 that have happened to date and our understanding of the
22 Government's position is they are defending against the
23 unlawfulness of those terminations in two different ways. They
24 are saying the agencies did it already and that OPM -- that,
25 you know, contrary to our evidence that OPM did it, and if they

1 did it, it was lawful.

2 So for the terminations that have happened to date, we --
3 we had amended the complaint to -- to state a claim, Your
4 Honor, even if they are right that the agencies did this to
5 date, those are still unlawful terminations, Your Honor.

6 **THE COURT:** No, no. If they're unlawful, those go to
7 the Merit Systems Protection Board.

8 That is kind of the classic case that -- where I would not
9 have subject matter jurisdiction. The -- so I am not agreeing
10 with you on that.

11 This case started out and should remain OPM-centric, and
12 OPM has got to be the one who did something unlawful in order
13 for you to get relief in this case. It just can't be that
14 we're going to bring in all these other agencies, even if --
15 even if the agency did something independent, had nothing to do
16 with OPM, and let's say that it was in violation of the Civil
17 Service Reform Act, that's a clear case that goes to the Merit
18 Systems Protection Board.

19 So I am -- I'm not agreeing with you on that.

20 All right. But I just -- I felt like, when your motion
21 came in, that -- this case is moving fast, so that's -- I'll
22 rule formally on it in due course; but that is my major
23 concern.

24 **MS. LEONARD:** Understood, Your Honor.

25 **THE COURT:** In terms of relief defendants -- relief

1 defendants, no problem. That is -- that is a legitimate
2 addition.

3 Okay. Now, to come back, have we done all the damage we
4 can do for now or can I -- do I need to stay on the line?

5 **MS. LEONARD:** Your Honor, we do have two more issues
6 to raise with you today, here.

7 And the first is with respect to -- we understand that
8 we'll be getting the Government's position with respect to
9 whether or not they're going to try to challenge and appeal
10 your order with respect to Mr. Ezell.

11 They have produced the list of the participants on the
12 phone -- the February 13th phone call between OPM and the
13 agencies. We have identified four of the individuals on that
14 list, as Your Honor ordered at the -- at the hearing last
15 Thursday. And the Government has also not confirmed that they
16 will produce those individuals for the hearing.

17 They are also not giving us an answer on that issue. And
18 we obviously need to know whether they're going to do that in
19 order to be able to cross-examine them and get to the truth of
20 what happened with respect to these OPM orders.

21 So that is issue Number 1.

22 There's a second issue, Your Honor. The New York Times
23 reported today that one of the individuals, the chief human
24 capital officer of the IRS, that Your Honor cited in -- in the
25 order after the plaintiffs put forward the evidence of that

1 person's public statements regarding OPM's direction, was
2 placed by the defendants on admin- -- was placed by its agency
3 on administrative leave. And it's very concerning, Your Honor,
4 that that occurred after Your Honor's order identifying that
5 evidence.

6 We would like to subpoena that person to come testify at
7 the PI hearing next week, Your Honor. And we would like
8 the Court's permission to do so.

9 So there are two issues: The four people from the list;
10 and the IRS -- they call them "chicos" -- the IRS "chico" who
11 the Government put on administrative leave after her statements
12 were cited in Your Honor's order.

13 **MR. HELLAND:** May I briefly be heard on these?

14 **THE COURT:** Sure.

15 **MR. HELLAND:** So I had envisioned that the first point
16 was already covered by Your Honor's order. I think, Your Honor
17 commented on it or at least a related point already. So I
18 would just propose that our response to both of these points be
19 presented by the same noon Monday deadline. We can either
20 include them in our papers or separately respond to plaintiffs
21 directly on these points. But we would just do so at that same
22 time, Your Honor.

23 **THE COURT:** Well, before I agree to that, is it true
24 that the IRS person was put on administrative leave?

25 **MR. HELLAND:** This is literally the first I'm hearing

1 of it, Your Honor. I had not heard that before plaintiffs'
2 counsel mentioned it just now.

3 **MS. LEONARD:** We can represent to Your Honor that we
4 believe it to be true.

5 **THE COURT:** Well, have you subpoenaed the people that
6 you want?

7 You should go ahead and subpoena them to appear at the
8 hearing. Don't wait for the Government to agree or not to
9 agree. You -- you're a big firm. You have vast resources.
10 You should go subpoena those people.

11 But, in addition, I want the Government to tell me on
12 Monday at noon that -- whether they're going to produce them
13 voluntarily at the hearing or at a deposition or by -- remotely
14 at -- at the evidentiary hearing.

15 **MR. HELLAND:** Yes, Your Honor. Understood.

16 **THE COURT:** Do the plaintiffs have any other witnesses
17 to that telephone call that are cooperative with you?

18 **MS. LEONARD:** So the list of -- we would need to
19 subpoena individuals.

20 So, Your Honor, we understood that your -- you ordered the
21 Government already to produce up to four of the individuals on
22 that list, so that's what we have asked them to do. Any other
23 individuals who are current government employees we would need
24 to subpoena.

25 **THE COURT:** I don't remember how I worded my order.

1 So if I ordered it, okay, I'll stand by that. I just don't
2 remember now; and I can't say that you're reading what I said
3 correctly.

4 I would like to have those people at the hearing, and I
5 would ask the Government to please cooperatively bring them.
6 But if you're going to insist on a subpoena, then -- then I
7 would at least ask you to accept service of the subpoena.

8 **MR. HELLAND:** I hear you, Your Honor; and we will set
9 our response on all of this forward at -- on noon on Monday.

10 **MS. LEONARD:** So, Your Honor, you can see the problem
11 with the timing that we have here, because we have had -- so
12 the order was in the transcript of the hearing on -- on
13 Thursday. I think Your Honor was quite clear.

14 And when we talked about that telephone call as to
15 their -- their need to give us the list of individuals and then
16 our ability to call up to four of them at the hearing, we have
17 complied with that and we are quite concerned, again, that what
18 we're hearing hear today is that the Government is shifting
19 positions and is not -- is considering not making those
20 individuals available in response to this Court's order.

21 We would -- we would -- we -- we're concerned that if we
22 wait until Monday to get their position, Your Honor, that with
23 respect to both Mr. Ezell and, now, these four other witnesses,
24 that it will be difficult to conduct any hearing on -- on
25 Thursday if the Government is refusing to put forward any of

1 the witnesses for that hearing.

2 And -- and the timing, again, is being driven by what we
3 see as an escalating harm every single day. And we would like
4 the opportunity to --

5 **THE COURT:** Is there any -- I mean, there were several
6 agencies that I -- that -- for which you had standing and that
7 I ordered OPM to rescind the memos. And I -- from reading the
8 press it seemed to me that that has been done.

9 Is there an agency where they did not rescind and an
10 agency is just going ahead and -- under some weird belief that
11 OPM can direct them to terminate people?

12 I don't think so.

13 **MS. LEONARD:** The Department of Defense, Your Honor.
14 The Department of Defense has continued to terminate people
15 using the template from OPM. We can provide you with the
16 proof.

17 **THE COURT:** Yes, but is it -- the template is one
18 thing. But is Department of Defense doing this under
19 compulsion from OPM?

20 **MS. LEONARD:** We believe that they are. And if it
21 looks like a duck, walks like a duck, and quacks like a duck,
22 just because you put a paper on it that says "Oh, it's the
23 agency's discretion" -- which is what OPM did this week -- that
24 doesn't mean it's not a duck, Your Honor.

25 They are absolutely still acting under compulsion from OPM

1 and all of the --

2 **THE COURT:** Oh, I don't know. You're going to have to
3 have proof of that.

4 Which one of your plaintiffs has standing to sue the DOD?

5 **MR. HELLAND:** I believe the veterans' organizations.

6 **THE COURT:** No, I thought they were suing -- for the
7 VA -- the Veterans Administration, I totally agree. But for
8 Department of Defense --

9 **MS. LEONARD:** I believe, that was the basis of
10 Your Honor's order last week, yes.

11 And I would also say, Your Honor, if I may, that all of
12 the terminations to date we will prove to Your Honor were done
13 because of centralized instructions from OPM. And the question
14 in this case, absolutely, is: How do we effectuate relief and
15 stop the irreparable harm that those terminations are causing?

16 **THE COURT:** You should be -- you should be getting
17 your evidence ready to prove that. It's not just your say-so.
18 I believe that you probably suspect that sincerely, but that's
19 a strong statement that you just made, and you should come to
20 the evidentiary hearing with some witnesses who can bear that
21 out.

22 And for the moment, though, the witnesses that are under
23 the control of the Government, they have a legitimate -- I
24 don't want to say "right," but interest that I'm going to give
25 them time to consider and talk with others in the government.

1 So I'm not -- I'm sticking with noon on Monday for the
2 Government to respond.

3 And, yes, you will have to possibly move heaven and Earth
4 on a short leash -- okay? -- timetable.

5 While you're doing all that, I have a criminal trial
6 starting on Monday. I will have to interrupt the criminal
7 trial to hear your case -- which I will do, but I -- you know,
8 your case is not the only case that I have, and not the only
9 case the Government has. So I'm -- I'm sorry. You're asking
10 for too much and I'm denying -- I'm denying a more expedited
11 schedule for the Government. They --

12 **MS. LEONARD:** I understand --

13 **THE COURT:** They're going to go tell us and make their
14 motion, if they're going to do it at all, Monday at noon. And
15 today is Thursday and -- I'm sorry, but I think they need the
16 time to do it. That's the only -- it's fair.

17 Now, with respect to the IRS person, that would be deeply
18 disturbing if somebody was terminated for that reason. I'm not
19 saying I have jurisdiction, even, over it, but it would greatly
20 disturb me if compliance with my orders turns out to get people
21 on administrative leave.

22 So I'm going to order the Government attorney now to
23 investigate this and report by tomorrow at noon by letter.

24 You can do that.

25 **MR. HELLAND:** And, Your Honor, is that a letter that

1 you want to --

2 **THE COURT:** To me -- to me and counsel to tell me --
3 to tell me is it true --

4 **MR. HELLAND:** Thank you, Your Honor.

5 **THE COURT:** -- that they put him on administrative
6 leave, and did this lawsuit have anything whatsoever to do with
7 that administrative leave.

8 **MR. HELLAND:** Thank you, Your Honor.

9 I just want to be clear. This is not something that would
10 be filed on a public docket, but will be submitted to Your
11 Honor --

12 **THE COURT:** No, it will be on the public document.

13 **MR. HELLAND:** Oh, okay.

14 **THE COURT:** On the public docket. Yes.

15 You can do it by letter or by -- by formal noticed
16 statement that would -- just a report to the Court on whether
17 it's true and -- or if it's not fully true, to what extent is
18 it true.

19 **MR. HELLAND:** Understood, Your Honor.

20 **THE COURT:** All right. Now, does the plaintiff have
21 anything more?

22 **MS. LEONARD:** With respect to the hearing next week --
23 so I think we understand absolutely and we appreciate all the
24 balancing of considerations and -- going into Your Honor's
25 order; and we will wait for the Government's position.

1 And if they agree to make the people available, there is
2 no problem; we will be ready to go on Thursday, and we will
3 confirm that.

4 If they refuse to make the four individuals on the list
5 who have the direct knowledge of the telephone call between OPM
6 and the agencies -- which they have now admitted occurred, and
7 if they refuse to make Mr. Ezell available, notwithstanding the
8 declaration, should we submit our -- I'm asking what happens
9 then, Your Honor, in terms of the Court's preferred procedures
10 next.

11 Because we will need to, I believe, discuss the
12 implications for the evidentiary hearing and the PI,
13 including -- so should we file a response to the Government's
14 position by noon the next day? What would your -- what would
15 the Court prefer?

16 **THE COURT:** Yeah, that would be a good step to take.

17 But my plan is to have the hearing no matter what.
18 Even -- unless the Court of Appeals directs me not to have the
19 hearing, we're going to have the hearing.

20 And even if the Government witnesses don't show up, that
21 could just result in striking the declaration. That would be a
22 home run for you, the plaintiffs, because then the -- they
23 would have no proof and the -- so I'm going to have the
24 hearing. I'm going to hold this hearing in person in
25 San Francisco, and whoever's witnesses come, I'm going to

1 listen to them.

2 And we will also have argument over where we go next, and
3 whether or not the TRO is merely extended or strengthened or
4 whatever.

5 But, you know, you have access, Plaintiffs, to witnesses,
6 I'm sure, that are not beholden to the Government, and you
7 ought to be thinking about bringing them to the hearing and
8 presenting them live.

9 **MS. LEONARD:** Your Honor --

10 **THE COURT:** Give the other side notice of who they're
11 going to be so they can prepare to cross-examine. But you
12 should be prepared to bring your witnesses.

13 I'm sorry. Go ahead. I interrupted you.

14 **MS. LEONARD:** No, I interrupted you, Your Honor. I
15 apologize.

16 Part of the problem here is that the Government has taken
17 the actions that it has taken in secrecy, Your Honor. And the
18 participants on the phone calls and Zoom meetings between OPM
19 and the agencies are government employees. And we are asking
20 the Government, per Your Honor's orders, to make those people
21 available.

22 So it is difficult for us to provide Your Honor with
23 witnesses with direct knowledge of the content. We certainly
24 have circumstantial evidence -- but direct knowledge of content
25 of those communications -- which is really at the heart of it

1 and what Your Honor was seeking to hear the truth on -- without
2 the Government making those individuals available.

3 **THE COURT:** Well, all right. Yes. I see your
4 problem.

5 And one thing you might be considering to do is a -- a
6 prompt -- by "prompt" I mean within a few hours -- filing
7 within the Court of Appeals to get your side of the equation
8 before the Court of Appeals. And -- so if that's where the
9 issue is going to wind up, that's where -- listen here.

10 I want to be very clear. When I say the Government has a
11 legitimate need to balance all these -- have their
12 conversations, please do not misrepresent that to the Court of
13 Appeals. I in no way think that it would be proper for the
14 Government to put forward Mr. Ezell as a witness and refuse to
15 let him be cross-examined. Zero.

16 Do not say to the Court of Appeals that -- when I use the
17 words "a legitimate," I meant that you have a legitimate need
18 to consult within the Government; but on the merits of what
19 you're trying to, I totally disagree. I think these people
20 should be made available to be -- so that we can get at the
21 truth of what happened here.

22 So that's -- let's be very clear. Don't misrepresent what
23 I'm saying in this phone call on the merits that -- I stand by
24 what I said earlier. They should show up next Thursday until
25 such time as I either change the order or the Court of Appeals

1 makes me do so.

2 **MS. LEONARD:** Your Honor, in -- Your Honor had
3 suggested earlier with respect to Mr. Ezell that we -- one of
4 Government's alternatives, if there really is a scheduling
5 issue, would be to make him available in D.C. for deposition.

6 With respect to the other four individuals, the plaintiffs
7 would be willing to go to D.C. and take their depositions early
8 next week so that could be used at the -- at the preliminary
9 injunction hearing as well. Of course, we prefer --

10 **THE COURT:** That would be very much appreciated. I
11 think that might solve some of the logistics problems, if there
12 are -- if it really is logistics.

13 **MS. LEONARD:** And we, of course, would prefer if the
14 Government would make them available, as they have been ordered
15 to do.

16 But I wanted to make it very clear that the plaintiffs are
17 very willing to do that and so if the objection is to bringing
18 them here to this Court -- which, of course, this Court has
19 venue and jurisdiction over this case and the ability to order
20 their appearance. But if that is the objection, that is not an
21 objection that the Government should be raising.

22 **THE COURT:** Well, if they -- yes, that's fine. Thank
23 you for that.

24 That could, in certain circumstances, solve the problem.
25 It depends on what is motivating the Government, and the

1 Government doesn't want to say yet.

2 So all right. Are we done?

3 **MR. HELLAND:** I believe so, Your Honor.

4 **MS. LEONARD:** I believe that is all from -- Your
5 Honor, we understand that you have authorized us to subpoena
6 the IRS CHCO who has --

7 **THE COURT:** Yes, please do.

8 **MS. LEONARD:** Thank you.

9 **THE COURT:** Please do. And if the Government will
10 not, by noon tomorrow, accept service, the Government attorney,
11 then you have the Court's permission to track her down and
12 serve her in person.

13 Now, there is a thing called the *Touhy* regulations. I
14 think it's T-O-U-H-Y. So you better look into that. Maybe
15 that only applies to the DOJ, but you better look and see
16 what -- if you have to go through some administrative hoops to
17 subpoena a government employee.

18 **MS. LEONARD:** I appreciate that, Your Honor.

19 **THE COURT:** Okay. Thank you all. I look forward to
20 seeing you next week.

21 **MR. HELLAND:** Thank you, Your Honor.

22 **MS. LEONARD:** Thank you very much, Your Honor.

23 **THE CLERK:** Court is adjourned.

24 (Proceedings adjourned at 1:44 p.m.)

25 ---o0o---

CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled matter.

DATE: Friday, March 7, 2025

A handwritten signature in blue ink, reading "Ruth Levine Ekhaus", followed by a horizontal line.

Ruth Levine Ekhaus, RMR, RDR, FCRR, CCG, CSR No. 12219
Official Reporter, U.S. District Court